

CHAPTER 545

AN ACT

HB 2448

Relating to energy incentives programs; creating new provisions; amending ORS 315.331, 469B.276, 469B.291, 469B.294, 469B.297 and 469B.300; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 469B.270 to 469B.306.

SECTION 2. (1) An owner of an energy conservation project with a total project cost certified under ORS 469B.291 of \$1 million or more that is subject to a recertification requirement in a performance agreement shall apply under this section for recertification of eligibility for the tax credit allowed under ORS 315.331.

(2) The applicant shall file an application for recertification with the State Department of Energy at least 60 days prior to the anniversary date of the issuance of the final certificate. The Director of the State Department of Energy may require recertification for the three years following the date of the issuance of the final certificate.

(3) The recertification application shall contain the following information:

(a) A description of the business operations conducted at the facility and any changes in the business operations since the project was completed;

(b) Energy consumption for the project or facility as shown in the preceding 12 months of utility billing records;

(c) A statement signed by the applicant attesting that the project is in compliance with all applicable laws related to the ownership and operation of the project;

(d) A statement signed by the project owner attesting that the project owner is current on all obligations to the state, including but not limited to taxes and permitting fees;

(e) An inspection of the project by the department, if required by the department; and

(f) Any other information required by the department.

(4) A recertification application filed under this section must be accompanied by the fee established under ORS 469B.294.

(5) The department shall review the recertification application and approve the application if it meets the requirements of subsections (3) and (4) of this section and the project is in compliance with all applicable statutes and administrative rules and with the performance agreement.

(6) The department may consult with the city or county in which the facility is located or

with any state agency in determining whether to approve a recertification application under this section.

(7) If the director approves a recertification application, the director shall issue a recertification of eligibility for a tax credit under ORS 315.331 for up to 10 percent of the total project cost certified under ORS 469B.291. The director may deny the recertification or issue a recertification in an amount of credit less than 10 percent of the total project cost certified under ORS 469B.291 if the director determines that the project is not in compliance with all applicable statutes and administrative rules and with the performance agreement.

(8) If the director does not approve a recertification application or reduces the amount of tax credit, the project owner may not claim, use or transfer that portion of the tax credit for which the recertification was denied.

(9) A person aggrieved by a decision of the director to deny or reduce the amount of a recertification for a tax credit may request and be granted a contested case hearing under ORS chapter 183.

SECTION 3. ORS 315.331 is amended to read:

315.331. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for an energy conservation project that is certified under ORS 469B.270 to 469B.306. The credit is allowed as follows:

(a) Except as provided in section 2 of this 2015 Act and in paragraph (b) of this subsection, the credit allowed in each of the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding three years shall be five percent of the certified cost, but may not exceed the tax liability of the taxpayer.

(b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit allowable under subsection (3) of this section may be claimed in the first tax year for which the credit may be claimed, but may not exceed the tax liability of the taxpayer.

(2) In order for a tax credit to be allowable under this section:

(a) The project must be located in Oregon.

(b) The project must have received final certification from the Director of the State Department of Energy under ORS 469B.270 to 469B.306.

(c) If the project is a research and development project, it must receive, prior to certification under ORS 469B.288, a recommendation from a qualified third party selected by the director.

(d) If the project is new construction or a total building retrofit, then the project must achieve, at a minimum, the energy efficiency standards required for:

(A) LEED Platinum certification;

(B) A four globes rating from the Green Globes program;

(C) A nationally or regionally recognized and appropriate sustainable building program whose performance standards are equivalent to the standards required for LEED Platinum certification or a four globes rating from the Green Globes program, as determined by the department; or

(D) Verification that the construction conformed to the standards of the Reach Code adopted pursuant to ORS 455.500.

(3) The total amount of credit allowable to an eligible taxpayer under this section may not exceed 35 percent of the certified cost of the project.

(4)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the project, notice thereof shall be given to the director, who shall revoke the certificate covering the project as of the date of such disposition.

(b) A new owner, or, upon re-leasing of the project, a new lessee, may apply for a new certificate under ORS 469B.291. The new lessee or owner must meet the requirements of ORS 469B.270 to 469B.306 and may claim a tax credit under this section only if all moneys owed by the new owner or lessee to the State of Oregon have been paid, if the project continues to operate and if all conditions in the final certification are met. The tax credit available to the new owner shall be limited to the amount of credit not claimed by the former owner or, for a new lessee, the amount of credit not claimed by the lessee under all previous leases. The State Department of Energy may waive the requirement that a new owner or lessee apply for a new certificate under ORS 469B.291 if the remaining credit is less than \$20,000.

(c) The department may not revoke the certificate covering a project under paragraph (a) of this subsection if the tax credit associated with the project has been transferred to a taxpayer who is an eligible applicant under ORS 469B.285.

(5) The tax credit allowed under this section for any one tax year may not exceed the tax liability of the taxpayer.

(6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise, any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (1) of this section only as provided in this subsection.

(7) The credit allowed under this section is not in lieu of any depreciation or amortization deduction for the project to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318 for such year.

(8) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax credits allowed under this section.

(9) The definitions in ORS 469B.270 apply to this section.

SECTION 4. ORS 469B.276 is amended to read:

469B.276. (1) The owner of a project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the potential tax credit, as determined at the time of the application for preliminary certification. **If the tax credit is subject to recertification, only that portion of the tax credit that has been recertified may be transferred.**

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

SECTION 5. ORS 469B.291 is amended to read:

469B.291. (1) The Director of the State Department of Energy may issue a final certification for an energy conservation project under this section only if:

(a) The project was installed or constructed under a preliminary certificate of approval issued under ORS 469B.288, unless preliminary certification is waived under ORS 469B.285 (5);

(b) The applicant demonstrates the ability to provide the information required by ORS 469B.285 (2) and does not violate any condition that may be imposed as described in [subsection (4)] **subsections (4) and (5)** of this section; and

(c) The project was installed or constructed in accordance with the applicable provisions of ORS 469B.270 to 469B.306 and any applicable rules or standards adopted by the director.

(2) Any person may apply to the State Department of Energy for final certification of a project:

(a) If the person received preliminary certification for the project under ORS 469B.288; and

(b) After completion of the installation or construction of the project.

(3) An application for final certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the project attested to by a certified public accountant who is not an employee of the applicant or, if the actual cost of the project

is less than \$50,000, copies of receipts for purchase and installation of the project;

(c) The amount of the credit under ORS 315.331 that is to be claimed;

(d) The number and type of jobs, directly connected to the allowance of the credit, that will be created by the operation and maintenance of the project over the five-year period beginning with the year of preliminary certification under ORS 469B.288;

(e) Information sufficient to demonstrate that the project will remain in operation for at least five years, unless the director by rule specifies another period of operation;

(f) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the director;

(g) Information, if applicable, pertaining to prior recommendation of the project by a qualified third party selected by the director; and

(h) Any other information determined by the director to be necessary prior to issuance of a final certificate, including inspection of the project by the department.

(4) As part of the final certification process, the director may require the applicant to enter into a performance agreement with the department. The performance agreement may include a recertification requirement under section 2 of this 2015 Act and any additional requirements that the director determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306.

[(4)] (5) After the filing of the application under this section, the director may issue the certificate together with any conditions, **including conditions imposed by a performance agreement**, that the director determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306. If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the project. However, the director may not certify an amount for tax credit purposes that is more than the amount approved in the preliminary certificate issued for the project.

[(5)] (6) **Except as otherwise provided in section 2 of this 2015 Act**, if the director rejects an application for final certification, or certifies a lesser amount of credit than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons for the action, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

[(6)] (7) Upon approval of an application for final certification of a project, the director shall certify the project. The final certification shall indicate the

amount of projected energy savings attributable to the project and the total project cost.

[(7)] (8) The director may establish by rule timelines and intermediate deadlines for submission of application materials.

SECTION 6. ORS 469B.294 is amended to read: 469B.294. By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification **or recertification** of an energy conservation project under ORS 469B.270 to 469B.306. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of ORS 469B.270 to 469B.306, including filing, investigating, granting and rejecting applications for certification **or recertification** and ensuring compliance with ORS 469B.270 to 469B.306 and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified.

SECTION 7. ORS 469B.297 is amended to read: 469B.297. (1) A certificate issued under ORS 469B.291 is required for purposes of obtaining tax credits in accordance with ORS 315.331. **Except as otherwise provided in section 2 of this 2015 Act**, such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the project under ORS 469B.291 is received by the State Department of Energy. **If required by the department in a performance agreement, the project owner shall seek recertification during the five-year period, as provided in section 2 of this 2015 Act.**

(2) If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable.

(3) For a transferee holding a credit that has been transferred under ORS 469B.276, the five-year period shall begin with the tax year in which the transferee pays for the credit.

SECTION 8. ORS 469B.300 is amended to read: 469B.300. (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a certificate issued under ORS 469B.291 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation;

(b) The holder of the certificate or the operator of the project has failed to construct or operate the

project in compliance with the plans, specifications and procedures in the certificate; or

(c) The project is no longer in operation.

(2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under ORS 315.331, from the certificate holder or a successor in interest to the business interests of the certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.

(3)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (2) of this section from the person that obtained certification from the State Department of Energy, or any successor in interest to the business interests of that person. An assessment of tax is not necessary and a statute of limitation does not preclude the collection of taxes described in this subsection.

(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires an interest through bankruptcy or through foreclosure of a security interest is not considered to be a successor in interest to the business interests of the person that obtained certification.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate

holder shall be denied any further relief under ORS 315.331 in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under ORS 469B.276 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 469B.276 may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section.

(6) If the project owner is subject to a performance agreement requiring recertification under section 2 of this 2015 Act, the certificate shall be considered revoked as to any portion of the tax credit that has not previously received approval under a recertification application that was required to have been filed pursuant to section 2 of this 2015 Act.

SECTION 9. Section 2 of this 2015 Act and the amendments to ORS 315.331, 469B.276, 469B.291, 469B.294, 469B.297 and 469B.300 by sections 3 to 8 of this 2015 Act apply to applications for final certification under ORS 469B.291 submitted on or after September 1, 2015, and to tax years beginning on or after January 1, 2015.

SECTION 10. This 2015 Act takes effect on the 91st day after the date on which the 2015 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Approved by the Governor June 25, 2015
 Filed in the office of Secretary of State June 29, 2015
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